

## **DEL BACKGROUND CHECK RULES**

### **170-06-0010 Purpose and Scope**

(1) The purpose of this chapter is to establish rules for background checks conducted by the Department of Early Learning (DEL). The department does background checks on individuals who are authorized to care for or have unsupervised access to children in child care agencies or under DEL approval. Background checks are conducted to find and evaluate any history of criminal convictions, findings of abuse or neglect of children or other vulnerable persons, adverse licensing actions, or other information that raises concerns about an individual's character and suitability to care for or have unsupervised access to children in child care.

(2) This chapter applies to applicants for child care agency licenses, licensees, persons working in or living on the premises of a child care agency, and child care providers who are authorized by DEL to care for children. These rules apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to care for or to have unsupervised access to children after the effective date of this chapter.

(3) If any provision of this chapter conflicts with a provision relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children in child care, the provisions in this chapter shall govern.

(4) Effective date: These rules are effective July 3, 2006, and apply prospectively.

[Statutory Authority: Laws of 2006, ch. 265 § 301.]

### **170-06-0020 Definitions**

The following definitions apply to this chapter:

(1) **"Authorized"** or **"authorization"** means qualified by DEL to have unsupervised access to children in child care or to work in or live on the premises of a child care agency.

(2) **"DEL"** or **"department"** means the department of early learning.

(3) **"Director's List"** means a list of crimes and civil adjudications, the commission of which disqualifies an individual from being authorized by DEL to care for or have unsupervised access to children in child care.

(4) **"Disqualified"** means DEL has determined that a person's background information prevents that person from being authorized by DEL to have unsupervised access to children in child care or to work in or live on the premises of a child care agency.

(5) **"Unsupervised access"** means:

- (a) An individual will or may have the opportunity to be alone with a child in care at any time for any length of time; and
- (b) Neither the licensee, a qualified employee, nor a relative or guardian of the child is present.

#### **170-06-0030 Reason for background checks**

The department does background checks to help safeguard the health, safety and well being of children in licensed child care agencies and in the care of DEL-approved providers. By doing background checks, the department reduces the risk of harm to children from caregivers who have been convicted of certain crimes or who have been found to have been a risk to children. The department's rules and state law require the evaluation of background information to determine the character, suitability and competence of persons who will care for or have unsupervised access to children in child care.

#### **170-06-0040 - Background inquiries**

(1) At the time of application for a license or for authorization to care for or have unsupervised access to children in child care, a completed background check form and finger print card, if required, must be submitted to the department for each person who will have unsupervised access to any child in care. This includes:

- (a) Each applicant for a license;
- (b) All staff of the licensed child care agency, whether they provide child care or not;
- (c) Assistants;
- (d) Volunteers;
- (e) Contracted providers; and
- (f) Each person living on the premises of a licensed facility who is 16 years of age or older.

(2) Each person identified in this section must consent to and authorize the department to access his or her criminal history and any information contained in any records about the person that are maintained by the Department of Social and Health Services, including Child Protective Services, Adult Protective Services, the Division of Home and Community Services, the Division of Residential Care Services, and the Division of Licensed Resources.

(3) When a licensee plans to add new staff, assistants, volunteers, or contracted providers, or when any person who is 16 years old or older moves onto the premises, the licensee shall require each person to complete and submit to the licensee a criminal history and background check form that must be submitted to DEL for processing before the date of hire or the date the individual moves onto the premises, as applicable.

(4) A person who has not been formally authorized by DEL to care for or have unsupervised access to children in child care may not have unsupervised access to any child in care.

(5) The department will discuss the result of the criminal history and background check information with the licensee, when applicable.

#### **170-06-0050 Department action following completion of background inquiry**

After the department receives the background information it will:

(1) Compare the background information with convictions/actions posted on the DEL director's list of disqualifying convictions/actions. The complete list can be found on the DEL website or by calling any DEL office.

(2) Review the background information using the following rules:

(a) A pending charge for a crime or a deferred prosecution is given the same weight as a conviction.

(b) If the conviction has been renamed it is given the same weight as the previous named conviction. For example, larceny is now called theft.

(c) Convictions whose titles are preceded with the word "attempted" are given the same weight as those titles without the word "attempted."

(d) The crime will not be considered a conviction for the purposes of the department when it has been pardoned or a court of law acts to expunge, dismiss, or vacate the conviction record, or if an order of dismissal has been entered following a period of probation, suspension or deferral of sentence.

(e) The term "conviction" has the same meaning as the term "conviction record" as defined in RCW 10.97.030 and shall include convictions or dispositions for crimes committed as either an adult or a juvenile. It shall also include convictions or dispositions for offenses for which the person received a deferred or suspended sentence, unless the record has been expunged according to law.

(f) A person will not be authorized to have unsupervised access to children if the individual is the subject of a pending child protective services (CPS) investigation.

(g) A person who has a "founded" finding for child abuse or neglect will not be authorized to have unsupervised access to children during the administrative hearing and appeals process.

(3) Conduct a character, competence and suitability assessment of the applicant, licensee, staff member, assistant, volunteer, contacted provider, or anyone living on the premises of a child care facility, if the individual is not automatically disqualified by a conviction record, pending charges and/or findings of abuse, neglect, exploitation or abandonment of a child or vulnerable adult, under the DEL director's list of disqualifying crimes and actions.

(4) Notify the licensee or child care provider whether or not the department is able to approve the

applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility to care for or have unsupervised access to children in child care.

#### **170-06-0060 Additional information the department may consider**

(1) Upon request, the licensee or any person who requests authorization to care for or to have unsupervised access to any child in care must provide to the department any additional reports or information it requests to assess the person's character, suitability and competence to have unsupervised access to children in care. This additional information may include, but is not limited to:

- (a) Sexual deviancy evaluations;
- (b) Substance abuse evaluations;
- (c) Psychiatric evaluations; and
- (d) Medical evaluations.

Any evaluation requested under this section must be by a DEL-approved evaluator and will be at the expense of the person being evaluated.

(2) The applicant licensee or the person being evaluated must give the department permission to speak with the evaluator in WAC 170-06-0060(1)(a) through (d) prior to and after the evaluation.

#### **170-06-0070 Disqualification**

(1) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed child care facility who has a background containing any of the convictions/actions posted on the DEL secretary's list of permanently disqualifying convictions/actions, shall be permanently disqualified from providing licensed child care or having unsupervised access to any child in care.

(2) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility who has a background containing any of the convictions posted on the DEL secretary's list of nonpermanent disqualifying convictions shall be disqualified from providing licensed child care or having unsupervised access to any child in care for five years after the conviction date.

(3) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility shall be disqualified from providing licensed child care or having unsupervised access to any child in care if there is background information that the person:

- (a) Has been found to have committed child abuse or neglect, unless the department determines that the person does not pose a risk to a child's safety and well-being;
- (b) Is the parent of a child who has been found to be a dependent child as defined in chapter 13.34 RCW unless the department determines that the person does not pose a risk to a child's safety and well-being;

- (c) Abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult as defined in chapter 74.34, unless the department determines that the person does not pose a risk to a child's safety and well-being;
  - (d) Had a license denied or revoked from an agency that regulates care of children or vulnerable adults, unless the department determines that the person does not pose a risk to a child's safety and well-being.
- (4) An applicant, licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility may be disqualified from providing licensed child care or having unsupervised access to any child in care if :
- (a) The licensee attempts to obtain a license by deceitful means, such as making false statements or omitting material information on the application;
  - (b) The staff, assistant, volunteer, contracted provider, or other person living on the premises of a licensed facility attempted to become employed, volunteer, or otherwise have unsupervised access to children by deceitful means, such as making false statements or omitting material information on an application to work or volunteer at a licensed child care agency or to otherwise provide child care;
  - (c) The licensee, the staff, assistant, volunteer, contracted provider, or other person living on the premises of a licensed facility used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children are present or presented a risk of harm to any child in care; or
  - (d) The licensee, the staff, assistant, volunteer, contracted provider, or other person living on the premises of a licensed facility has attempted, committed, permitted, or assisted in an illegal act on the premises of a home or facility providing care to children. For purposes of this subsection, a licensee attempted, committed, permitted, or assisted in an illegal act if he or she knew or should have known that the illegal act occurred.
- (5) A licensee, staff, assistant, volunteer, contracted provider, or anyone living on the premises of a licensed facility may be disqualified from providing child care or having unsupervised access to any child in care if the person has background containing information other than conviction information that the department determines:
- (a) Makes the person not of suitable character and competence or of sufficient physical or mental health to meet the needs of any child in care; or
  - (b) Places any person at a licensed child care facility at risk of harm.

#### **170-06-0080 Notification of Disqualification**

- (1) The department will notify in writing the applicant, care provider, employer, or licensee if the individual is disqualified by the background check from being authorized to care for children or to have unsupervised access to children in child care.
- (2) If the department sends a notice of disqualification, the applicant will not receive a license, contract, certification, or be authorized to have unsupervised access to children in child care.

#### **170-06-0090 Administrative hearing to contest disqualification**

- (1) Any person seeking a license or employment with a licensed facility may request an administrative hearing to contest the department's decision process to disqualify him or her from having unsupervised access to any child in care. *Provided*, An individual shall not have the right to challenge a discretionary determination made pursuant to WAC 170-06-0070(3).
- (2) Prospective volunteers, interns, contracted providers, or those seeking certification do not have the right to appeal the department's decision to disqualify them from having unsupervised access to any child in care.
- (3) The employer or prospective employer cannot contest the department's decision on behalf of any other person, including a prospective employee.
- (4) The administrative hearing will take place before an administrative law judge employed by the office of administrative hearings (chapter 34.05 RCW), pursuant to WAC chapter 170-03.

#### **170-06-0100 Request for administrative hearing**

- (1) Any person who has a right to contest a decision to deny a license or disqualify them from having unsupervised access to any child in care based on an evaluation of background check information must request a hearing within twenty-eight days of receipt of the decision.
- (2) A request for a hearing must meet the requirements of WAC chapter 170-03.
- (3) Any decision by the department denying a license or disqualifying a person from having unsupervised access to any child in care is effective immediately upon notice and shall continue pending a final administrative decision on the merits.

#### **170-06- 0110 Limitations on Challenges to Disqualifications**

- (1) If the denial or disqualification is based on a criminal conviction, the appellant cannot contest the conviction in the administrative hearing.
- (2) If the denial or disqualification is based on a finding of child abuse or neglect, or a finding of abandonment, abuse, neglect, exploitation, or financial exploitation a vulnerable adult as defined in chapter 74.34, the appellant cannot contest the finding if:
  - (a) The appellant was notified of the finding by DSHS and failed to request a hearing to contest the finding; or
  - (b) The appellant was notified of the finding by DSHS and requested a hearing to contest the finding, but the finding was upheld by final administrative order or superior court order.

(3) If the denial or disqualification is based on a court order finding the appellant's child to be dependent as defined in chapter 13.34 RCW, the appellant cannot contest the finding of dependency in the administrative hearing.